

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA, Case No. 1:20cr4
Akron, Ohio
Plaintiff, February 27, 2020

vs.

RAFAEL MOORE,
Defendant.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN R. ADAMS
UNITED STATES DISTRICT JUDGE

PRETRIAL
(ROUGH DRAFT)

APPEARANCES:

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DEFENDANT'S
EXHIBIT

A 1:20CR00004

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P R O C E E D I N G S

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THE COURT: For the record, the court has before it today Case Number 1:20cr04. The case is United States of America versus Rafael Moore. We're here for a final pretrial. Our trial is scheduled currently for March 9 at 9:00 a.m.

Counsel for the government, are you ready to proceed?

MR. KOLANSKY: Yes, Your Honor. Robert Kolansky on behalf of the United States.

THE COURT: Thank you. On behalf of the defendant?

MR. WARNER: Carlos Warner, Assistant federal Defender, here for Mr. Moore.

THE COURT: Thank you.

Counsel for the government, would you provide the court with an update, a status of the matter, please?

MR. KOLANSKY: Your Honor, at this point, the government has turned over discovery albeit, quite frankly, a little later than we had hoped for. Detective Donald Copcheck who's a Cleveland police detective and a FTO with the ATF, he was out with a work-related injury for approximately two weeks during January, so it took some time for me to actually get my hands on that discovery to be able

1 to turn it over. It has been turned over a little more than
2 a week ago. But I also understand that Mr. Warner is in
3 the process of preparing for a trial, as well, which
4 basically puts us in the same place that I think Mr. Warner
5 and I are going to be asking for a little more time that he
6 can effectively review the material with his client and
7 prepare for.

8 THE COURT: What is the extent of the material?

9 MR. KOLANSKY: It's voluminous in the form of
10 videos, Your Honor. Quite frankly, it's a search warrant
11 executed in the defendant's house where various drugs and
12 guns were found. The paper documents are I think about 20
13 pages in total, but there are a number of hours of body
14 camera footage from various.

15 THE COURT: You say number of hours. How long?
16 How many hours?

17 MR. KOLANSKY: I believe they were at the -- this
18 is an estimate without perfectly for you. I think they were
19 there for two or three hours. There are probably four
20 different detectives. So theoretically, that's if three
21 hours times four, it's 12 hours of footage. We have
22 discussed that there are a couple of portions that I've
23 reviewed that I think are essentially more important than
24 others where the defendant was Mirandized and gave a
25 statement.

1 I am certainly going to specifically point out
2 specifically where what that is to so try to streamline the
3 process.

4 THE COURT: So 12 hours of video and 20 documents.

5 MR. KOLANSKY: 20 pages of documents, Your Honor.

6 THE COURT: 20 pages.

7 MR. KOLANSKY: Yes. I provided three documents to
8 defense counsel, 21 pages.

9 THE COURT: How long ago did you do that?

10 MR. KOLANSKY: That was more than a week ago.

11 That was on the 19th.

12 THE COURT: On the 19th?

13 MR. KOLANSKY: Yes, sir.

14 THE COURT: All right. Counsel for the defendant.

15 MR. WARNER: Thank you, Your Honor. May it please
16 the court.

17 I want to accept a little bit of responsibility as
18 Mr. Kolansky said, as well, because I have a life sentence
19 trial starting with Judge Polster on Monday that does not
20 look like it's going to be avoided. So I have been in doing
21 all I can just to prep everything for that really for the
22 past few weeks myself.

23 THE COURT: Which trial was scheduled first, this
24 one or that one?

25 MR. WARNER: That one was scheduled first, but I

1 was brought into that case by the court and my office
2 specifically.

3 THE COURT: So you are newly appointed counsel in
4 that case?

5 MR. WARNER: No, no. Mr. Thompson is the lead
6 counsel, but I was brought in because it's a life case and I
7 have a prior relationship with the client. And Judge
8 Polster is well aware and was advocating for it to verify
9 exactly how hard -- I've been, in fact, Mr. Moore, I
10 apologize to him when we spoke yesterday, because I've been
11 in CCA like almost every day and my clients all know it, but
12 I've been working with the client. I've been in triage mode
13 if we're talking about Mash, or some sort of hospital.

14 THE COURT: The other client has another attorney
15 besides you? Mr. Thompson, right?

16 MR. WARNER: Yes. It's a very complicated case,
17 and, yes, he does have another attorney.

18 THE COURT: Mr. Moore has only you.

19 MR. WARNER: That's for sure.

20 THE COURT: Okay.

21 MR. WARNER: For now. So this case is a case
22 that's important to Mr. Moore. He's facing -- what's the
23 statutory maximum in the guidelines in this case?

24 MR. KOLANSKY: Your Honor, the defendant is
25 looking at a 40-year maximum on Counts 1, 2 and 3, a

1 ten-year maximum on Count 4, and I guess I believe it's life
2 maximum of Count Number 5.

3 The guidelines, Your Honor, for counts -- well,
4 for Counts 1, 2 and 3 are five-year mandatory minimum. For
5 Count 5, there's a five-year consecutive for the 924(c).

6 As far as the actual guidelines go, Your Honor, I
7 believe it's a --

8 MR. WARNER: Unless the court wants to know.

9 THE COURT: Don't interrupt him. He's talking. I
10 asked him a question. Just stand there quietly.

11 MR. WARNER: Okay. Thank you, Your Honor.

12 THE COURT: Please. Don't try to talk over him or
13 banter back and forth while he's answering my questions.
14 Have a seat.

15 MR. KOLANSKY: Your Honor, I believe that as far
16 as the guidelines go, based on my review, I have the
17 defendant as a level 26 for the drug offenses in Counts 1
18 through 3. If he were to accept responsibility and also be
19 convicted of Count Number 5, it would be -- well, taking a
20 step back. Criminal History Category III with four points
21 for the 26 on the drug counts, 1 through 3, I have then,
22 with three levels of acceptance of responsibility, is 57 to
23 71 months. Again, Count 5 carries a 60-month consecutive
24 sentence, therefore, it would be 117 to -- my math is bad --
25 131.

1 THE COURT: All right. You conveyed this by way
2 of a proposed plea agreement to counsel?

3 MR. KOLANSKY: I have, Your Honor. I sent a
4 proposed plea agreement earlier this week to Mr. Warner. On
5 the 25th, on Tuesday, Your Honor.

6 THE COURT: Mr. Warner, now, what do you want to
7 add for the record.

8 MR. WARNER: Judge, I need -- first of all, the
9 paper discovery will be going -- Mr. Moore will receive
10 today. Before the paper discovery goes to my client, I
11 always review it to make sure that there's no material that
12 I don't think is appropriate for him to have or her to have,
13 so but he's getting that today.

14 And then the videos I can bring them. I'm going
15 to be back at CCA probably over the weekend. I could bring
16 him the videos this weekend. When I -- I will likely be in
17 trial it looks like eight to ten days.

18 THE COURT: Counsel, let me ask you this. You
19 chose to become cocounsel in another case.

20 Did you not know and recognize that you had a
21 trial date scheduled in this case.

22 March 9, right?

23 MR. WARNER: Yes.

24 THE COURT: So the question becomes when you
25 decide that you're going to add yourself as cocounsel to

1 another case, rather than someone else in your office, who
2 may not have a conflict, by way of example, if this case
3 goes forward to trial as it's been previously scheduled on
4 March 9, you're going to be here.

5 You're not going to go to another judge or another
6 case and switch off to become cocounsel in another case and
7 say, "Oh, by the way, now, because I chose to become
8 cocounsel in another case, you're going to have to, Judge
9 Adams, continue your case, and my client's going to sit in
10 custody waiting, because I chose," because you took a
11 voluntary decision to add yourself into another case. It
12 doesn't work that way.

13 If I have to reach out to Judge Polster, I will
14 tell him. It's not appropriate for you to go on and become
15 cocounsel and then say, "Well, I'm not going have to deal
16 with Judge Adams' case, you know, I've got a conflict."
17 Well, no, you don't. You don't have a conflict at all. The
18 only conflict you the one you created for yourself?

19 MR. WARNER: May I respond.

20 THE COURT: You sought no continuance in this
21 case. I don't have a motion from you. So none of that is
22 made part of the record.

23 So go ahead. Add what you want for the record.

24 MR. WARNER: Thank you, Your Honor.

25 First of all, whether or not it's voluntary or

1 not, I was, again, asked/assigned back to that case. It's a
2 life case, and two attorneys in our office do those cases.

3 As for -- it's not only Mr. Moore and it's not
4 just Judge Adams. It's many other judges, too. It's
5 because I have to -- excuse me. I have to triage my cases.
6 So the case that goes to trial, on Monday, if it was your
7 case, everything else would go on hold, Your Honor, and I
8 encourage you to call Judge Polster, if need be. He has
9 witnessed what I've been doing and working on that case.

10 Now, so far as Mr. Moore, we've had some meetings.
11 I've been I think very honest with him. I've told him, and
12 I am telling my other clients exactly what's happening. I
13 am trying to meet with some of them in the midst, not to
14 mention the clients we have on the outside. I am in CCA a
15 lot and I am confident that we are going to have a great
16 relationship when push comes to shove. It's not it. It's
17 just that I didn't have any documentation until a few days
18 ago.

19 THE COURT: What do you mean a few days ago? The
20 19th of February.

21 MR. WARNER: I mean, I don't think it's anything
22 -- it's Mr. Kolansky's fault. We didn't receive the videos
23 until the 24th.

24 MR. KOLANSKY: The 21st.

25 MR. WARNER: I think that day it actually got to

1 my office on the -- because you pick them up Friday and
2 there's a weekend. So I didn't even have access to the
3 videos on this case until it would be Monday this week. So
4 I haven't been able to review all those videos, and I could
5 turn them over blindly to him if the court thinks it's all
6 right.

7 Normally, again, either I or somebody is going to
8 look at those videos before we turn them over just in case
9 there's --

10 THE COURT: Why? Because their body cam videos in
11 their entirety of the search.

12 So why is it you have to look at them before the
13 defendant? Because it's the defendant's case. He has a
14 right to look at the videos. Are you going to then view
15 them and say, "Oh, by the way, Mr. Moore, I am only going to
16 give you part of the videos. I'm not going to give them all
17 to you." Is there some valid reasons why you would do that?

18 And what would Mr. Moore say? He might say, "Wait
19 a minute. By the by, I want to see all the videos."

20 MR. WARNER: He might say that. Every now and
21 then, I will have documents like this and they will have
22 informant information, personal information, stuff that has
23 to be redacted just because everybody is busy and that comes
24 through, and I don't want that going to the client.

25 So I make sure to review it all. Same with the

1 videos. On the videos, I don't know what he's saying. He
2 could be talking about cooperating for example, I don't know
3 that he is. He could be talking about any number of things
4 that if those are viewed at CCA would cause him in trouble,
5 and so I would like to look at those.

6 Now, is it realistic I'm going to look at I think
7 12 hours of videos before we get it to him given that I have
8 a trial? I might have somebody else look at them, or if the
9 court is fine with it, I'm going to send it to him and
10 that's fine.

11 THE COURT: A couple things.

12 First of all, the March 9 trial date was set by
13 agreement of counsel. I always schedule dates, ask counsel,
14 is March 9 convenient for the parties. I don't set these
15 dates unilaterally. So the date was set in conjunction with
16 counsel, making sure that both parties were available. So
17 there's no dispute that both sides were available. That's
18 why this date was set.

19 Secondly, rules of superintendents, I recognize
20 we're in federal court, but the state court, rules of
21 superintendents are very simple. The first scheduled trial
22 date, first case scheduled goes first. So the fact that you
23 chose to add yourself to another case without seeking
24 continuance here or without -- I don't know whether you
25 notified Judge Polster or not, "Judge, I have a previously

1 scheduled trial date before Judge Adams. I have an
2 obligation to Mr. Moore, and I need to be there."

3 So you make a voluntary choice to try to create a
4 conflict, you created it. As far as I am concerned, the
5 trial date is confirmed. We will go on March 9.

6 So if you want another date for me to schedule a
7 final cutoff date for a plea, I will give you that courtesy,
8 but otherwise, given the press of business, we have a trial
9 date, and we're going to hold that trial date. It's that
10 simple.

11 MR. WARNER: I understand, Your Honor. For the
12 record, let me just say that I would be -- irrespective of
13 my other commitments, which I am mentioning to the court
14 only because I don't think that the prosecutor should be
15 taking all of the heat for this when I get the discovery
16 this week, and we have a trial scheduled next week,
17 that's -- there's 12 hours of video, that's not an
18 appropriate amount of time for us to cover the evidence and
19 determine whether or not there are issues that need to be
20 litigated or if this is a plea.

21 So I would be asking for a continuance
22 irrespective of my other obligations.

23 THE COURT: I'm not going to continue this case,
24 Counsel, for any great lengthy period of time. So don't
25 think that you're going to go into Judge Polster's room.

1 You never sought a continuance there, did you?

2 MR. WARNER: With Judge Polster?

3 THE COURT: Yes.

4 MR. WARNER: That case has been pending three
5 years, Your Honor.

6 THE COURT: Did you ask for a -- that wasn't my
7 question. Did you ask for a continuance and say, "Judge
8 Polster, I've just recently joined this case. I have a
9 conflict. I have a case that was scheduled with Judge Adams
10 back on from March 9. So therefore, accordingly, I really
11 can't go forward in this case, or at least if I am going to
12 participate in this case, Judge Polster, I will need a
13 continuance because I have a commitment to Mr. Moore. And I
14 have a trial date before Judge Adams."

15 Mr. Moore, how many times have you seen Mr. Warner
16 on your case?

17 You care to tell me or not? You are shaking your
18 head.

19 How many times?

20 THE DEFENDANT: Once or twice.

21 MR. WARNER: I think two or three times I've seen
22 him, Your Honor, which is -- you know, that's not --

23 THE COURT: We can find that out, of course.

24 MR. WARNER: No, I mean --

25 THE COURT: When was this case arraigned?

1 MR. WARNER: I mean, Your Honor, feel free to call
2 Judge Polster, CCA. I mean, I have zero to hide. It's not
3 necessarily a voluntary situation, but if this court orders
4 me to be here on March 9 for trial, certainly, I will, you
5 know, put things on the record, but I will be here on March
6 9 for a trial.

7 Every now and then, these conflicts happen, but I
8 am not in control over this conflict and, Judge, it's not
9 only a conflict with you. Judge Gwin -- I have a trial
10 scheduled with him.

11 THE COURT: No, no, Counsel. It is within your
12 control. This is a conflict that you've created. You've
13 created it by saying, "I am going to be add myself to
14 another case knowing full well you have a trial currently
15 scheduled here."

16 So when you make the conflict, that's why, as I've
17 pointed out to you, if you go back and look at the Ohio
18 Rules of superintendents, it's very clear to avoid these
19 issues, first scheduled goes. And you can't go back and
20 create a conflict by simply adding yourself to another case
21 and then come to the other judge and say, "Oh, by the way,
22 Judge, the trial date that you scheduled, I can't really
23 make it because now I want to be an attorney in another
24 case. I'm going to add myself to another case," another
25 case as you've indicated has been pending now for three

1 years.

2 And so you don't seek a continuance in front of
3 Judge Polster. You don't seek a continuance here, because
4 today is the final pretrial, by which pursuant to my order
5 is the last day I will accept a plea. So now who creates
6 the conflict here? And by the way, as I've already stated,
7 when I scheduled the March 9 date, as I always do, and I can
8 go back and read the record, and say, "Counsel for the
9 government, is March 9 a convenient date for trial? Yes,
10 Your Honor. Mr. Warner, is March 9 a convenient date for a
11 trial? Yes, Your Honor."

12 So you create the conflict. So your office should
13 say, "Wait a minute. Before we're going to let you join
14 Judge Polster's case, by the way, Mr. Warner, do you have
15 any conflicts with any other judges or any other cases or
16 any other defendants? And if you do, how are you going to
17 deal with those? Are you going to file a motion for a
18 continuance? What are you going to do?"

19 You've done nothing. You've come here and said,
20 "Oh, by the way. Fait accompli, Judge. You can't go
21 forward on March 9 because I am now going to be in a case
22 with Judge Polster."

23 MR. WARNER: I am not trying to argue with you.
24 We can't be in trial on March the 9 because I didn't get
25 discovery in this case until Monday, and I haven't reviewed

1 it. And that's not Mr. Kolansky's fault. It's the fact
2 that I don't know when our initial appearance was. I think
3 it was early in January, I would say, and it was a long
4 period before we received any discovery. So we received the
5 paper discovery I think on the 19th or the 20th, and then we
6 received these videos on the 24.

7 So that's the basis for the continuance. I am
8 also letting the court know what my personal obligations
9 are.

10 THE COURT: Your personal obligation is to this
11 defendant in this court and in this trial. That's where
12 your obligation lies right now.

13 MR. WARNER: And I have never sold one client
14 short and Mr. Moore will not sold short at all. That's why
15 I am being completely candid with both you and Mr. Moore.

16 THE COURT: Did I miss something?

17 Did you not tell me that you were spending all of
18 your time preparing for this case that might involved a life
19 sentence?

20 MR. WARNER: It does involve a life sentence, Your
21 Honor, and yes, we've been preparing none stop. I've been
22 getting home at 8:00, 9:00, 10:00.

23 THE COURT: Maybe you should go back to your
24 office and say, "You know, it's really unfortunate, but I
25 have other clients and I have other cases that are scheduled

1 for trial. And so rather than add me to this case at a
2 later -- at a late time, I shouldn't be doing that to the
3 detriment of my other clients."

4 MR. WARNER: I think that the court's touching on
5 some big issues.

6 THE COURT: Well, that's between you and your
7 office.

8 MR. WARNER: I am assigned cases and I tend to
9 them all, and I treat them all with importance that I would
10 treat my own case.

11 THE COURT: Mr. Moore is facing about ten years in
12 prison, if he's convicted at trial, or maybe longer.

13 So Mr. Moore is facing a long period of time, too?

14 MR. WARNER: Yes, he is.

15 THE COURT: So here's what we're going to do.
16 March 9 will be the final cutoff date for a plea in this
17 case.

18 MR. WARNER: Okay.

19 THE COURT: So you will be here at 1:00 p.m., On
20 March 9. That will give you adequate time to go over with
21 the defendant the video and the papers. He's here today.
22 He will be here until 4:00.

23 MR. WARNER: I will be here, Your Honor.

24 THE COURT: If you need equipment for videos, we
25 will give the equipment so you can go over the videos.

1 And the government, you will provide him with the
2 most important parts?

3 MR. KOLANSKY: I will, Your Honor.

4 THE COURT: Do that.

5 And the trial date will be continued until March
6 14, one week, at 9:00 a.m.

7 MR. WARNER: So March 9 at 1:00.

8 THE COURT: Final plea trial. No plea agreement
9 will be accepted after that date.

10 MR. WARNER: I do have a sentencing at noon on
11 March 9?

12 THE COURT: Where is that at?

13 MR. WARNER: I believe that is Judge Gwin.

14 THE COURT: What time?

15 MR. WARNER: 12:00.

16 THE COURT: 2:30 then here. That will give you
17 plenty of time to be here, right?

18 MR. WARNER: 2:30.

19 THE COURT: 2:30 you will be here.

20 MR. WARNER: I am more than happy, if --

21 THE COURT: The other problem here, I didn't touch
22 on, was speedy trial. So we will schedule it for trial
23 March 13, the last day we can schedule a trial date, due to
24 speedy trial.

25 MR. WARNER: I think Mr. Moore would give you a

1 waiver given the charges, but I don't know if the court
2 wants to inquire.

3 THE COURT: You haven't even talked to him about
4 it. Why don't you take some time to talk to him about
5 whether or not he wants to waive his rights to a speedy
6 trial. He may not.

7 MR. WARNER: Okay.

8 (Pause.)

9 MR. WARNER: He's indicated to me he doesn't
10 desire a speedy trial. He's willing to waive his right to a
11 speedy trial. I've explained to him what the -- how the
12 speedy trial statute worked in federal court, and he's
13 willing to waive that for any period that the court.

14 THE COURT: Mr. Moore, is that correct?

15 THE DEFENDANT: Yes.

16 THE COURT: You need additional time to talk to
17 Mr. Warner to confirm? You understand your waiver to a
18 rights to a speedy trial?

19 Sir, I'm not convinced you do, based upon your
20 response.

21 I will step off. You take 10 minutes, 15 minutes,
22 how much time you need to explain it to him in detail. I am
23 going to go back and look at my calendar. We're going to
24 try this case. Speedy trial -- again, we will try this case
25 within the next two weeks, so be prepared. We will step

1 off.

2 MR. WARNER: Thank you, Your Honor.

3 (Thereupon, a recess was had.)

4 THE COURT: Please be seated.

5 All right, Counsel. What's your client's desire
6 regarding waiver of his speedy trial rights?

7 MR. WARNER: Your Honor, I did explain to him in
8 detail how the speedy trial statute works here in federal
9 court. I think he understands and he's willing to waive up
10 to 60 days if the court pleases at this time. He's in no
11 rush to go to trial.

12 THE COURT: Sorry, Counsel. He's in no rush, but
13 our trial schedule is extremely busy. I have cases with 17,
14 18, 19 defendants, so, no, we're not going to continue this
15 matter for any period closer to that time.

16 As a matter of fact, the trial date will be March
17 13. That's a Friday. We can pick a jury on the Friday, and
18 we will begin on the next Monday.

19 MR. WARNER: Judge, I was not asking for a
20 continuance. I was simply saying that he's willing to waive
21 his speedy trial for that period of time.

22 THE COURT: He may do that. If he wishes, he may
23 do that in an abundance of caution. We'll proceed as I've
24 indicated, first of all, as to speedy trial, and then we
25 will schedule new dates.

1 Mr. Moore, have you had an opportunity to discuss
2 with Mr. Warner waiving your right to a speedy trial?

3 THE DEFENDANT: Yes.

4 THE COURT: Has he explained it to you in detail?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you need any further explanation?

7 THE DEFENDANT: No.

8 THE COURT: You wish to waive your right to a
9 speedy trial and consent to your current trial date of March
10 9 being continued?

11 THE DEFENDANT: Yes.

12 THE COURT: Have you executed the written waiver?
13 We will provide it to you at this time.

14 MR. WARNER: We will just sign as it, Judge, or
15 would you like me to write in the 60 days somewhere, or does
16 it not matter to the court?

17 THE COURT: It's up to you, Counsel. The case is
18 going to be tried longer -- far earlier than 60 days.
19 That's for certain.

20 MR. WARNER: I am just saying in case something
21 happens.

22 I will just say May 1, if it pleases the court.
23 Thank you, Your Honor.

24 THE COURT: For the record, the court would note
25 that the defendant has executed a written waiver of his

1 rights of speedy trial. The court will approve the waiver.
2 As grounds for the continuance, the court finds the ends of
3 justice are served by the granting the motion for a
4 continuance to allow the defendant the additional time to
5 review about 20 pages of documents, along with 12 hours of
6 body cam video that appears to have been provided to the
7 defendant this past week.

8 So that there's adequate time to do that in
9 preparation for trial and/or to engage in any other
10 necessary preparation taking into account the exercise of
11 due diligence.

12 So I will approve it. As it relates to the
13 continuance, we will convert today's trial date to the
14 current trial date of March 9 to a change of plea date.
15 It's Monday. My understanding is 2:30 is convenient for
16 both sides.

17 Counsel for the government, is that convene.

18 MR. KOLANSKY: Yes, Your Honor. Thank you.

19 THE COURT: Counsel for the defendant?

20 MR. WARNER: It is, Your Honor. Thank you.

21 THE COURT: Jury selection will be on March 13.
22 That is a Friday. Then we can proceed to trial on the
23 following Monday if need be.

24 And we will discuss the details of witnesses, et
25 cetera. Perhaps now you can tell me generally, counsel for

1 the government, how many witnesses you would anticipate?

2 MR. KOLANSKY: Depending on stipulations, Your
3 Honor, as to the controlled substances, as far as fact
4 witnesses, I would think no more than three.

5 THE COURT: All right. And counsel for the
6 defendant, how many witnesses would you anticipate should we
7 go to trial?

8 MR. WARNER: Judge, I have no idea at this point.
9 I mean, we haven't had a chance to really review the
10 discovery to go through it. I will be happy to file a
11 notice ex parte or otherwise letting the court and
12 Mr. Kolansky know what we're thinking once we go through the
13 discovery.

14 THE COURT: We will see on March 9, and just it's
15 clear, there's been a proposed plea agreement drafted,
16 prepared and submitted to the defendant?

17 MR. KOLANSKY: Yes, Your Honor.

18 THE COURT: You did receive it, Mr. Warner?

19 MR. WARNER: I did, Your Honor.

20 THE COURT: No suggestions here. Mr. Moore, I am
21 not suggesting you should plead guilty at all. As a matter
22 of fact, you have a right to a trial, you are presumed
23 innocent. But if you wish to avail yourself of a plea
24 agreement by the government, Monday, March 9 is the last
25 time I will accept a plea other than a plea to the

1 indictment.

2 Is that clear?

3 THE DEFENDANT: Yes.

4 THE COURT: Discuss that further with your
5 counsel.

6 Just for the record, Mr. Warner, what is this case
7 that -- in which you filed an appearance which created this
8 conflict?

9 MR. WARNER: I didn't file an appearance. I was
10 initially assigned the case. The name of the case is Shawn
11 Smith, it's with Judge Polster. The case number is 17CR258.

12 THE COURT: All right. I'd just encourage both
13 counsel, just for future reference, while it may not be
14 directly related, it's clearly related to how we proceed in
15 court here.

16 Take a look at the Ohio rules -- superintendents
17 Rule 41, which addresses continuances and conflict of trial
18 dates. While, again, it is not -- certainly not binding
19 here in federal court, it's certainly relevant to the issues
20 before the court and so, therefore, hopefully the parties
21 will understand how we're going to proceed and how we've
22 always proceeded in this room, and that is first scheduled
23 trial always goes first. That's the way it's always done in
24 state court, at least by my experience, and as part of the
25 rules.

1 So that's how we will proceed. We will see you on
2 Monday, the 9th and then we have our trial date.

3 Thank you very much.

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